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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SWAROVSKI OPTIK NORTH AMERICA
LIMITED,

Plaintiff
v.

IBUY GROUP LLC f/k/a VALOR GROUP LLC;
and IBUY DISTRIBUTION LLC f/k/a
F & E TRADING LLC d/b/a 6TH AVE
ELECTRONICS,

Defendant.

CIVIL ACTION NO. 3:23-cv-01210-GC-TJB

DOCUMENT FILED ELECTRONICALLY

**FIRST AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiff SWAROVSKI OPTIK North America Limited (“Plaintiff” or “SWAROVSKI OPTIK”), by and through its undersigned counsel, complains of Defendants iBuy Group LLC f/k/a Valor Group LLC (“iBuy Group”) and iBuy Distribution LLC f/k/a F & E Trading LLC d/b/a 6th Ave Electronics’ (“iBuy Distribution” and together with iBuy Group, the “Defendants”) conduct and alleges upon information and belief as follows:

NATURE OF THIS ACTION

1. SWAROVSKI OPTIK seeks injunctive relief and monetary damages for Defendants’ trademark infringement, false advertising, and unfair competition under the Lanham

Act, 15 U.S.C. § 1051, *et seq.*, as well as related state law claims arising from Defendants' infringing conduct.

2. This case concerns Defendants' wrongful, misleading promotion and sale of SWAROVSKI OPTIK Products (defined herein) through online commerce sites. Defendants have and continue to falsely advertise the SWAROVSKI OPTIK Products they offer for sale and sell to consumers in the United States through online commerce sites, including, but not limited to, 6ave.com, iBuy.com, Amazon.com, eBay.com, and Walmart.com. Specifically, Defendants are offering "new" SWAROVSKI OPTIK Products designed and intended for resale to North America but fulfilling orders with non-genuine foreign products of unknown origin which are not manufactured by SWAROVSKI OPTIK.

3. Defendants' conduct has produced and, unless enjoined by this Court, will continue to produce a likelihood of consumer confusion and deception, to the irreparable injury of SWAROVSKI OPTIK. As a result of Defendants' actions, SWAROVSKI OPTIK is suffering a loss of the enormous goodwill that SWAROVSKI OPTIK has created in its trademarks and is losing lost profits from lost sales of products.

4. This action seeks permanent injunctive relief and damages for Defendants' infringement of SWAROVSKI OPTIK's intellectual property rights.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this Complaint pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and (b), as these claims arise under the Trademark Laws of the United States.

6. This Court has supplemental jurisdiction over the pendent state law claims pursuant to 28 U.S.C. § 1337(a).

7. This Court has personal jurisdiction over Defendants, which are both New Jersey limited liability companies with principal places of business in Somerset, New Jersey. Defendants regularly conduct business or have done business and sold products to consumers, including SWAROVSKI OPTIK Products, within New Jersey.

8. Venue is proper in the United States District Court for the District of New Jersey pursuant to 28 U.S.C. § 1391 because both Defendants reside in this judicial district, and because a substantial part of the events or omissions giving rise to this claim occurred in this District.

9. Standing is proper over SWAROVSKI OPTIK's trademark claims as 15 U.S.C. § 1125(a) specifically states that “[a]ny person who... uses in commerce any... false designation of origin, false or misleading description of fact, or false or misleading representation of fact... shall be liable ***in a civil action by any person*** who believes that he or she is or is likely to be damaged by such act.” 15 U.S.C. § 1125(a) (emphasis added). Unlike claims for trademark infringement under 15 U.S.C. § 1114, which specific language limits claims to “a civil action by the ***[trademark] registrant,***” claims under 15 U.S.C. § 1125(a) can be brought by non-trademark holders who claim to be injured by the alleged misconduct. *See, e.g., Holiday Inns, Inc. v. Trump*, 617 F. Supp. 1443, 1467 (D.N.J. 1985) (“Section 43(a) expressly extends standing beyond the trademark owner to ‘any person who believes that he is or is likely to be damaged’ by defendant’s conduct.”); *Mercedes-Benz USA, LLC v. ATX Grp., Inc.*, 2009 WL 2255727, at *9 (D.N.J. July 27, 2009) (finding that, unlike 15 U.S.C. § 1114 claims which are limited to trademark holders, any individual claiming harm has standing under 15 U.S.C. § 1125(a)).

PARTIES

10. Plaintiff SWAROVSKI OPTIK North America Limited is a Rhode Island limited liability company with its principal place of business in Cranston, Rhode Island. SWAROVSKI

OPTIK sells a variety of binoculars and spotting scope products and accessories under the SWAROVSKI OPTIK brand name (the “SWAROVSKI OPTIK Products”).

11. Defendant iBuy Group LLC f/k/a Valor Group LLC is a New Jersey limited liability company with its principal place of business located at 50 Atrium Drive, Somerset, NJ 08873. Defendant iBuy Group is the parent company of Defendant iBuy Distribution.

12. Defendant iBuy Distribution LLC f/k/a F & E Trading LLC d/b/a 6th Avenue Electronics is a New Jersey limited liability company with its principal place of business located at 50 Atrium Drive, Somerset, NJ 08873. Defendant iBuy Distribution does business or has done business and sold products to customers, including SWAROVSKI OPTIK Products, within the State of New Jersey and this District through various online commerce sites including, but not limited to, 6ave.com, iBuy.com, Amazon.com, eBay.com, and Walmart.com.

FACTS

SWAROVSKI OPTIK’s Trademark Usage

13. The U.S. Patent and Trademark Office (“PTO”) has issued several registrations for marks used with binocular and spotting scope products and services (hereinafter, the “SWAROVSKI OPTIK Marks”). The SWAROVSKI OPTIK Marks include, but are not limited to:

Mark	Registration No.	Registration Date
SWAROVSKI OPTIK	5,836,773	August 20, 2019

14. The SWAROVSKI OPTIK Marks have been in continuous use since at least their respective dates of registration.

15. SWAROVSKI OPTIK advertises, distributes, and sells its SWAROVSKI OPTIK Products to consumers under the SWAROVSKI OPTIK Marks.

16. SWAROVSKI OPTIK has also acquired common law rights in the use of the SWAROVSKI OPTIK Marks throughout the United States.

17. The federal trademark registrations for the SWAROVSKI OPTIK Marks were duly and legally issued, are valid and subsisting, and constitute *prima facie* evidence of the validity of the SWAROVSKI OPTIK Marks.

18. SWAROVSKI OPTIK has invested a substantial amount of money and has expended significant time and effort in advertising, promoting, and developing the SWAROVSKI OPTIK Marks throughout the United States and the world. As a result of such advertising and promotion, SWAROVSKI OPTIK has established substantial goodwill and widespread recognition in the SWAROVSKI OPTIK Marks, and the Marks have become associated exclusively with SWAROVSKI OPTIK and SWAROVSKI OPTIK Products by both customers and potential customers, as well as the general public at large.

19. To create and maintain such goodwill among its customers, SWAROVSKI OPTIK has taken substantial steps to ensure that products bearing the SWAROVSKI OPTIK Marks are of the highest quality. As a result, the SWAROVSKI OPTIK Marks have become widely known and are recognized throughout the United States and the world as symbols of high quality products.

20. For example, each SWAROVSKI OPTIK Product intended for resale into the North American market is protected by the SWAROVSKI OPTIK Limited Lifetime Warranty (the “SWAROVSKI OPTIK North American Warranty”). A leaflet setting forth the terms of the SWAROVSKI OPTIK North American Warranty is included as part of the packaging of every SWAROVSKI OPTIK Product intended for resale into North America.

21. Per its terms, the SWAROVSKI OPTIK North American Warranty applies only to SWAROVSKI OPTIK Products “imported by SWAROVSKI OPTIK North America and sold to a consumer by an Authorized U.S. or Canadian SWAROVSKI OPTIK North American Dealer.” Specifically, the SWAROVSKI OPTIK North American Warranty states:

LIMITED LIFETIME WARRANTY

Thank you for purchasing this instrument and welcome to the world of SWAROVSKI OPTIK. Since our founding in 1949, the SWAROVSKI OPTIK community has been committed to providing an ownership experience, which includes our legendary service that is second to none. We sincerely believe that our optics are the best in the world and put them through rigorous tests to ensure that the name you trust is built to the highest standards. But in the unlikely event that you discover a problem with workmanship or materials, we'll gladly examine the instrument. SWAROVSKI OPTIK offers a lifetime warranty against defects in materials or workmanship on the optical system of our products for products purchased by US and Canadian residents from an authorized SWAROVSKI OPTIK North American dealer. Once examined, if it is determined by our technicians that the optical system is defective, we will repair or replace the instrument or defective part. SWAROVSKI OPTIK warrants the following from the date of purchase for the period noted: all other parts of the instrument for ten years; all electronic components for two years; and all non-optical products (i.e. accessories, tripods etc.) for two years. This warranty is subject to normal use and proper care and maintenance as prescribed in the Owner's Manual and determined by SWAROVSKI OPTIK. This warranty is void if damage results from unauthorized repairs, accident, alteration, misuse, abuse, neglect, fire, flood or other acts of God. If after the warranty period your instrument needs servicing, please call customer service at (800) 426-3089. At SWAROVSKI OPTIK, we are totally committed to our customer, products and service. Once you have had the pleasure of owning and using our products, we are sure they will become your trusted companions for life.

“Any SWAROVSKI OPTIK product that is purchased in North America that is not imported by SWAROVSKI OPTIK North America and not sold to a consumer by an Authorized U.S. or Canadian SWAROVSKI OPTIK North America Dealer has no Authorized Warranty.” Should you require repair service, please go to https://www.swarovskioptik.com/customer_service or call customer assistance at (800) 426-3089 to obtain a Service Order Number (SO), which will be used to identify your warranty request through its completion. When you call, our customer service representative will give you instructions as to where to send or take the product for service. Whenever you send or take your product to us, please enclose your name, shipping address, daytime phone number, a brief description of the problem, and a copy of the receipt from an authorized U.S. or Canadian SWAROVSKI OPTIK dealer. Please write the Service Order Number on the enclosure and on the outside of any packaging. We will determine, at our option, whether to repair or replace the instrument. If the instrument is not covered under the warranty, we will contact you with an estimate of the repair cost. Repair charges must be settled prior to work being completed. Any correspondence should be sent to:

SWAROVSKI OPTIK N.A. Ltd. • 2 Slater Road • Cranston, RI 02920 / warrantyrepair@swarovskioptik.us

22. As a result of, *inter alia*, the care and skill exercised by SWAROVSKI OPTIK in the conduct of its business, the high quality of the goods sold under the SWAROVSKI OPTIK Marks, and the extensive advertising, sale, and promotion by SWAROVSKI OPTIK of its products, the SWAROVSKI OPTIK Marks have acquired secondary meaning in the United States and the world, including this District.

23. SWAROVSKI OPTIK is not now, nor has it ever been, affiliated with Defendants, and has not now, nor has it ever, given Defendants authorization to use the SWAROVSKI OPTIK Marks.

Defendants' Infringing, False Advertising, and Other Improper Conduct

24. Defendants are selling non-genuine products of unknown foreign origin bearing the SWAROVSKI OPTIK Marks.

25. SWAROVSKI OPTIK does not manufacture the products of unknown foreign origin sold by Defendants which bear the SWAROVSKI OPTIK Marks.

26. SWAROVSKI OPTIK has never authorized or otherwise granted Defendants permission to sell products bearing the SWAROVSKI OPTIK Marks. Defendants are not authorized SWAROVSKI OPTIK resellers or distributors.

27. Accordingly, the products sold by Defendants bearing the SWAROVSKI OPTIK Marks are not genuine SWAROVSKI OPTIK products, and, as explained in detail below, are delivered in altered packaging different than what a consumer would receive from SWAROVSKI OPTIK.

28. Despite this, Defendants have sold and are currently selling products bearing the SWAROVSKI OPTIK Marks to United States consumers on various online commerce sites, including, but not limited to, 6ave.com, iBuy.com, Amazon.com (using seller names, including, but not limited to, “6ave”),¹ eBay.com (using seller names, including, but not limited to, “6ave”), and Walmart.com (using seller names, including, but not limited to, “6AVE Electronics”).

29. Defendants offer for sale and sell products on the Internet to consumers in the United States using the SWAROVSKI OPTIK Marks.

30. The products bearing the SWAROVSKI OPTIK Marks that Defendants sell online are advertised as being in “new” condition designed and intended for resale to North America.

¹ The Amazon Seller ID associated with Amazon Reseller 6ave is ALAQLAKJ574UN.

31. The below are examples of Defendants' product listings advertising products bearing the SWAROVSKI OPTIK Marks to consumers in the United States on the Internet:

6ave.com

6ave Electronics

Search... All categories ▾

Cameras & Video ▾ Pro Audio ▾ Mobile ▾ Electronics ▾ Computers & Office ▾ Home & Kitchen ▾

Home > Swarovski > Swarovski SLC 10x56 Binoculars

Swarovski SLC 10x56 Binoculars

SWAROVSKI | Brand New

Price: \$2,339.95

Quantity: 1

Add to cart Buy with PayPal More payment options

Get FREE Shipping. Confirmed orders might take 1-2 days for processing.

Amazon.com

Swarovski 10x42 NL Pure Binoculars

Visit the SWAROVSKI Store

4.5★ 37 ratings | 10 answered questions

Amazon's Choice for "swarovski binoculars"

\$3,369⁰⁰

prime

FREE Returns

Pay \$3,369.00 \$3,279.95 after using available Amazon Rewards Visa Card Points.

Enhance your purchase

Payment plans

From \$187.17/mo (18 mo) with 0% APR

Brand: SWAROVSKI

Age Range (Description): Adults

Special Feature: Slip Resistant

Objective Lens Diameter: 42 Millimeters

Specific Uses For Product: Bird Watching

About this item

- Portable Size: These Swarovski 10x42 NL Pure Binoculars thus provide unprecedented nature experiences. Keep the overview. See more in every situation. Thanks to its perfect handling and the seemingly endless field of vision, the NL Pure 10x42 becomes even more versatile.
- Large FOV: The large field of view (399 feet at 1000 yards) with almost indiscernible edges allows you to experience nature as never before – and immerse yourself in the moment. This large field of view combined with the compact design of the binoculars and superb ergonomics takes the viewing experience to the next level.

\$3,369⁰⁰

prime

FREE Returns

FREE delivery Thursday, February 23. Order within 1 hr 12 mins.

Details

Deliver to SAMANTHA - Boston 02130

Only 20 left in stock - order soon

Qty: 1

Add to Cart Buy Now

Secure transaction

Ships from Gave

Sold by Gave

Return policy: Eligible for Return, Refund or Replacement within 30 days of receipt

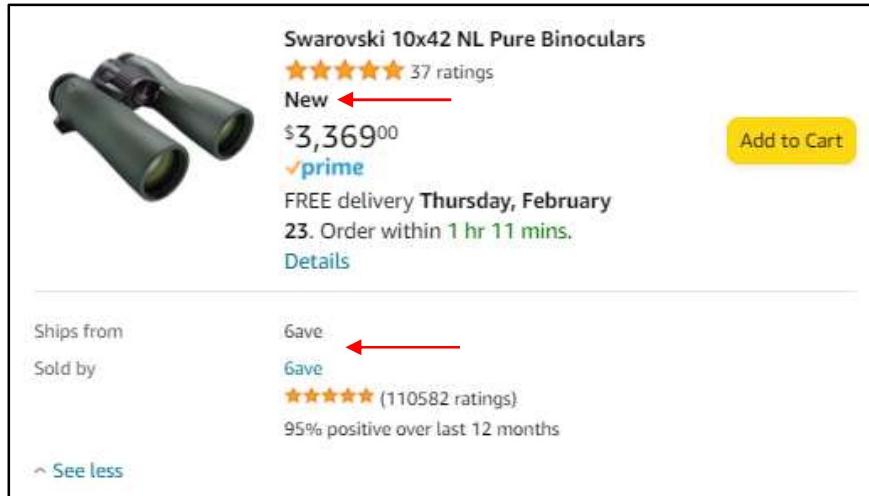
Add to List

Add to Baby Registry

Add to Registry & Gifting

New (12) from \$3,369.00 prime

Have one to sell? Sell on Amazon



eBay.com

32. Defendant iBuy Group's website, valorgroupholdings.com, advertises to consumers that it has a "distribution network in multiple countries, with the aim to establish affiliates that will buy and sell throughout the globe."

33. Defendant iBuy Distribution's website, ibuy.com, similarly advertises to consumers as a "global distributor in the electronics industry" that it has "relationships with emerging international markets" and has "connections in numerous countries including Hong

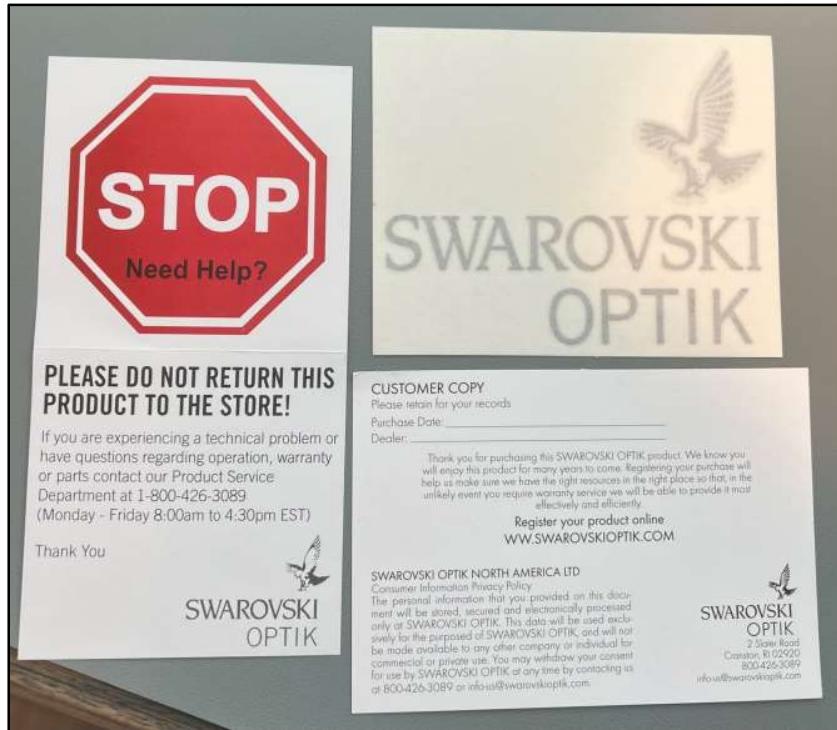
Kong, Japan, Singapore, Dubai, United Kingdom, The Netherlands, Panama, Argentina, Puerto Rico, Honduras, Colombia, Mexico and Canada.”

34. Despite advertising “new” SWAROVSKI OPTIK products designed and intended for resale in North America, the SWAROVSKI OPTIK products Defendants actually sell and deliver to consumers in the United States are non-genuine foreign products of unknown origin which are not manufactured by SWAROVSKI OPTIK.

35. Moreover, only SWAROVSKI OPTIK Products “imported by SWAROVSKI OPTIK North America and sold to a consumer by an Authorized U.S. or Canadian SWAROVSKI OPTIK North American Dealer” are covered by the SWAROVSKI OPTIK North American Warranty. As such, products bearing the SWAROVSKI OPTIK Marks of unknown foreign origin sold by Defendants are not covered by the SWAROVSKI OPTIK North American Warranty.

36. Furthermore, the products bearing the SWAROVSKI OPTIK Marks of unknown foreign origin sold by Defendants have different product packaging and legal disclaimers than SWAROVSKI OPTIK Products sold by SWAROVSKI OPTIK.

37. For example, all SWAROVSKI OPTIK Products designed and intended for resale in North America are accompanied by, as part of the product packaging, a leaflet setting forth the terms of the SWAROVSKI OPTIK North American Warranty and Consumer Privacy Policy, directions as to how to contact SWAROVSKI OPTIK in the event of technical problems or questions regarding operation of the product, and a free SWAROVSKI OPTIK decal sticker:



38. As another example, SWAROVSKI OPTIK also places a California Proposition 65 disclaimer sticker on the product packaging of all SWAROVSKI OPTIK Products designed and intended for resale to the North American market. The California Proposition 65 labels are mandated by the state of California and inform users of the SWAROVSKI OPTIK Products about their potential exposures to chemicals that cause cancer, birth defects, or other reproductive harm.

39. The product packaging for Defendants' non-genuine products of unknown foreign origin bearing the SWAROVSKI OPTIK Marks do not have a California Proposition 65 disclaimer sticker providing the warning information to consumers as mandated by California law.

40. After importing Defendants' non-genuine products of unknown foreign origin bearing the SWAROVSKI OPTIK Marks into the United States, Defendants falsely advertise the SWAROVSKI OPTIK products they offer for sale and sell on the Internet to United States consumers using the SWAROVSKI OPTIK Marks.

41. Specifically, Defendants advertise “new” SWAROVSKI OPTIK products designed and intended for resale to North America on the Internet but fulfill orders with their SWAROVSKI OPTIK products of unknown foreign origin instead.

42. By advertising “new” SWAROVSKI OPTIK products to consumers in the United States, Defendants falsely represent and/or create the false impression that the products are designed and intended for resale to North America and are accompanied by the corresponding SWAROVSKI OPTIK North American Warranty and product packaging. However, the products bearing the SWAROVSKI OPTIK Marks of unknown foreign origin actually sold and delivered to consumers by Defendants are materially different products not intended for resale in the United States under the SWAROVSKI OPTIK Marks.

43. Furthermore, Defendants falsely advertise SWAROVSKI OPTIK products on amazon.com. Defendants represent that the SWAROVSKI OPTIK products they offer for sale on amazon.com are “new,” yet Defendants’ SWAROVSKI OPTIK products on Amazon.com are not in “new” condition as advertised.

44. Amazon’s announced Terms and Conditions² require that in order to advertise a product as “new,” it must carry the manufacturer’s warranty:

General condition guidelines

The following guidelines apply to all product categories unless otherwise indicated in the Category-Specific Condition Guidelines listed below:

New:

Just like it sounds. A brand-new item. Original manufacturer's warranty, if any, still applies, with warranty details included in the listing comments. Original packaging is present for most New items but certain items like shoes may be re-boxed.

² Available at: <https://sellercentral.amazon.com/help/hub/reference/external/200339950>.

45. Pursuant to its terms, the SWAROVSKI OPTIK North American Warranty applies only to SWAROVSKI OPTIK Products “imported by SWAROVSKI OPTIK North America and sold to a consumer by an Authorized U.S. or Canadian SWAROVSKI OPTIK North American Dealer.”

46. Because the products bearing the SWAROVSKI OPTIK Marks Defendants actually sell and deliver to United States consumers are non-genuine and of unknown foreign origin, the SWAROVSKI OPTIK products offered for sale and sold by Defendants are not covered—and cannot be covered—by the SWAROVSKI OPTIK North American Warranty.

47. Additionally, because Defendants are not authorized to sell SWAROVSKI OPTIK Products, the SWAROVSKI OPTIK North American Warranty excludes products sold by Defendants. The SWAROVSKI OPTIK products offered for sale and sold by Defendants are not covered—and cannot be covered—by the SWAROVSKI OPTIK North American Warranty.

48. Because Defendants’ SWAROVSKI OPTIK products are not covered by the SWAROVSKI OPTIK North American Warranty, the products bearing the SWAROVSKI OPTIK Marks actually sold and delivered to purchasing customers by Defendants via amazon.com are not in “new” condition pursuant to Amazon’s Terms and Conditions, as advertised.

49. Moreover, Defendants falsely advertise SWAROVSKI OPTIK products on eBay.com. Defendants represent that the SWAROVSKI OPTIK products they offers for sale on eBay.com are “brand-new” “in its original packaging” that “should be the same as what is found in a retail store.” Specifically, Defendants’ eBay.com product listings for SWAROVSKI OPTIK products state:

Seller assumes all responsibility for this listing. ←

Last updated on Feb 20, 2023 14:45:48 PST [View all revisions](#)

Item specifics

Condition:	New: A brand-new, unused, unopened, undamaged item in its original packaging (where packaging is applicable). Packaging should be the same as what is found in a retail store, unless the item is handmade or was packaged by the manufacturer in non-retail packaging, such as an unprinted box or plastic bag. See the seller's listing for full details. See all condition definitions	Size:	N/A
Item Height:	10	Item Length:	10
Item Width:	10	Compatible Operating System:	N/A
Connectivity:	N/A	Maximum Aperture:	N/A
Maximum Resolution:	N/A	Network:	N/A
Processor:	N/A	Storage Capacity:	N/A
UPC:	708026720109	EAN:	0708026720109
Brand:	Swarovski	Type:	Binoculars
Model:	72010	Maximum Magnification:	10x
MPN:	72010	Features:	Fogproof

50. However, the products bearing the SWAROVSKI OPTIK Marks of unknown foreign origin sold by Defendants have materially different product packaging than SWAROVSKI OPTIK Products designed and intended for resale to North America.

51. Because the products bearing the SWAROVSKI OPTIK Marks Defendants actually sell and deliver to purchasing customers have materially different product packaging than SWAROVSKI OPTIK Products designed and intended for resale to North America, the SWAROVSKI OPTIK products actually sold and delivered to purchasing customers by Defendants via eBay.com do not come in packaging that is “the same as what is found in a retail store,” as advertised.

52. Defendants intentionally advertise and sell products bearing the SWAROVSKI OPTIK Marks in ways that are likely to deceive consumers and create consumer confusion.

53. Defendants’ continued advertisement, display, and sale of products bearing the SWAROVSKI OPTIK Marks on the Internet has harmed, and continues to harm, SWAROVSKI OPTIK and consumers.

Likelihood of Confusion and Injury Caused by Defendants' Actions

54. Defendants' actions substantially harm SWAROVSKI OPTIK by placing falsely advertised and materially different SWAROVSKI OPTIK products into the stream of commerce in the United States.

55. Defendants' advertisement and sale of non-genuine products of unknown foreign origin bearing the SWAROVSKI OPTIK Marks is likely to cause—and has caused—consumer confusion by representing to consumers that the SWAROVSKI OPTIK products offered for sale by Defendants are “new” and designed and intended for resale to North America, when they are not.

56. Defendants' advertisement and sale of non-genuine products of unknown foreign origin bearing the SWAROVSKI OPTIK Marks is likely to cause—and has caused—consumer confusion and disappointment regarding SWAROVSKI OPTIK's sponsorship or approval of those products.

57. Defendants' actions substantially harm SWAROVSKI OPTIK's goodwill and reputation when consumers learn that the products bearing the SWAROVSKI OPTIK Marks they have purchased from Defendants are materially different than SWAROVSKI OPTIK Products designed and intended for resale to North America and not protected by the SWAROVSKI OPTIK North American Warranty.

58. Defendants' conduct results in consumer confusion as well as the dilution of SWAROVSKI OPTIK's goodwill and trade name as consumers are not receiving the products they believe they are purchasing.

59. The harm being caused by Defendants in this case is not theoretical. Specifically, consumers have complained about Defendants' false and misleading advertisements and practice

of improperly offering for sale and selling products designed and intended for sale to international markets. While not a review regarding the products at issue in this case, the below evidences that customers find warranty and product origin material to their purchasing decision:

 **You forgot to mention that was a grey market item therefore there is no warranty with Sony. Be honest and write it in the description. Outside of that the camera is fine.** i***a (124★) US \$974.95
Sony RX100 VII Premium Compact Camera +1.0-type stacked CMOS sensor (DSCRX100M7) (#204064812982)

 "This item is listed as a USA model. However I noticed there was no warranty card in the box nor was the serial number recognized by Canon USA online. Is this an international/grey market model?"
Read less
By Kyle Re on April 26, 2022.

 "Camera was good but came with foreign power cord and manual, that should have been shown in description but was not."
By James M. on September 30, 2022.

60. Consumers have also complained about Defendants' practice of falsely advertising the condition of the products offered for sale and sold on the Internet:

 **The item was not properly packed. The box had very little padding inside and it arrived open. The item was not new. It had been opened to remove the warranty information and whatever other documents came with it.** y***e (2) US \$8,414.95
NIKKOR Z 800mm f/6.3 VR S (International Model) (#204092290995)

 **Not good at all lied in description it was an open box when they said it was manufactured sealed.** 3***t (30★) US \$934.95
Sony Alpha A6100 Mirrorless Camera with 16-50mm Zoom Lens (White) (#194480195687)

61. Moreover, by offering products bearing the SWAROVSKI OPTIK Marks to consumers in the United States without a California Proposition 65 disclaimer, Defendants endanger the health and safety of SWAROVSKI OPTIK's consumers, who, therefore, may not be aware of potential health risks.

62. Additionally, by offering products bearing the SWAROVSKI OPTIK Marks to consumers in the United States without a California Proposition 65 disclaimer, Defendants cause

SWAROVSKI OPTIK products to enter the stream of commerce in the United States that do not comply with applicable state and federal regulations, creating product liability exposure for SWAROVSKI OPTIK, as well damage to SWAROVSKI OPTIK's goodwill and reputation.

63. Defendants' conduct as described herein results in the lessening of sales of genuine, properly advertised SWAROVSKI OPTIK Products to the detriment of SWAROVSKI OPTIK.

64. As a result of Defendants' actions, SWAROVSKI OPTIK is suffering the loss of the enormous goodwill it created in the SWAROVSKI OPTIK Marks.

65. Defendants continue to commit the acts complained of herein, and unless restrained and enjoined, will continue to do so, all to SWAROVSKI OPTIK's irreparable harm.

COUNT I
Lanham Act – Trademark Infringement and False Advertising
(15 U.S.C. § 1125)

66. SWAROVSKI OPTIK hereby realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

67. This is a claim for federal trademark infringement under 15 U.S.C. § 1125(a).

68. SWAROVSKI OPTIK engages in interstate activities designed to promote its goods and services sold, as well as the goodwill associated with the SWAROVSKI OPTIK Marks, throughout the United States.

69. The SWAROVSKI OPTIK Marks have been, and will continue to be, known throughout the United States as identifying and distinguishing SWAROVSKI OPTIK's products and services.

70. By selling or distributing products using the SWAROVSKI OPTIK Marks as alleged herein, Defendants are engaging in unfair competition, false advertising, and/or falsely

representing sponsorship by, affiliation with, or connection to SWAROVSKI OPTIK and their goods and services in violation of 15 U.S.C. § 1125(a).

71. By advertising or promoting products using the SWAROVSKI OPTIK Marks as alleged herein, Defendants are misrepresenting the nature, characteristics, and qualities of their goods and services in violation of 15 U.S.C. § 1125(a).

72. Defendants' actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with the SWAROVSKI OPTIK Marks, thereby causing immediate, substantial, and irreparable injury to SWAROVSKI OPTIK.

73. By selling and advertising products under the SWAROVSKI OPTIK Marks as alleged herein, SWAROVSKI OPTIK is entitled to a judgment of three times its damages and Defendants' ill-gotten profits, together with reasonable attorneys' fees, pursuant to 15 U.S.C. § 1117(a).

74. As a direct and proximate result of Defendants' actions, SWAROVSKI OPTIK has been, and continues to be, damaged by Defendants' activities and conduct. Defendants have profited thereby, and unless their conduct is enjoined, SWAROVSKI OPTIK's reputation and goodwill will continue to suffer irreparable injury that cannot adequately be calculated or compensated by money damages. Accordingly, SWAROVSKI OPTIK is entitled to injunctive relief pursuant to 15 U.S.C. § 1116.

COUNT II
Deceptive Trade Practices Under State Law
(N.J.S.A. §§ 56:8-1, et seq.)

75. SWAROVSKI OPTIK hereby realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

76. By advertising or promoting products using the SWAROVSKI OPTIK Marks as alleged herein, Defendants have used or employed unconscionable commercial practices, deception, false pretenses, false promises, and misrepresentations in the sale of SWAROVSKI OPTIK to consumers.

77. As detailed above, Defendants' acts have caused a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval of the SWAROVSKI OPTIK Products that Defendants sell to consumers.

78. Defendants' acts have caused SWAROVSKI OPTIK damage, have irreparably harmed SWAROVSKI OPTIK and, unless enjoined, will continue to do so in a manner affording SWAROVSKI OPTIK no adequate remedy at law.

79. SWAROVSKI OPTIK has refused to desist from these wrongful acts, and therefore Defendants have indicated that they intend to continue this unlawful conduct, unless restrained by this Court.

RELIEF REQUESTED

WHEREFORE, Plaintiff SWAROVSKI OPTIK North America Limited prays for judgment in its favor and against Defendants providing the following relief:

- A. Finding that, (i) as to Count I, Defendants' conduct violates 15 U.S.C. § 1125(a); and (ii) as to Count II, Defendants engaged in willful unfair and deceptive conduct in violation of state law; resulting in Defendants, their partners, officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with Defendants, including, but not limited to, any online platform, such as Amazon.com, eBay.com, and Walmart.com, or any website, such as

6ave.com or iBuy.com, website host, website administrator, domain registrar, or internet service provider, being preliminarily and permanently enjoined from:

- a. using, or attempting to use, any of SWAROVSKI OPTIK's intellectual property, including, but not limited to, the SWAROVSKI OPTIK Marks;
 - b. acquiring, or taking any steps to acquire, any products bearing the SWAROVSKI OPTIK Marks;
 - c. selling, or taking any steps to sell, any products bearing the SWAROVSKI OPTIK Marks;
 - d. engaging in any activity constituting unfair competition with SWAROVSKI OPTIK; and
 - e. inducing, assisting, or abetting any other person or entity in engaging in or performing any of the business activities decried in the paragraphs above.
- B. Award SWAROVSKI OPTIK its actual damages suffered as a result of Defendants' acts and treble said damages as provided by law pursuant to 15 U.S.C. § 1117;
- C. Award SWAROVSKI OPTIK Defendants' profits as a result of Defendants' acts and treble said damages as provided by law pursuant to 15 U.S.C. § 1117;
- D. Enter judgment that Defendants' acts of infringement have been knowing and willful;
- E. Award SWAROVSKI OPTIK its reasonable attorneys' fees in bringing this action as allowed by law;
- F. Award SWAROVSKI OPTIK pre-judgment and post-judgment interest in the maximum amount allowed under the law;
- G. Award SWAROVSKI OPTIK the costs incurred in bringing this action;
- H. Award SWAROVSKI OPTIK other relief as this Court deems just and proper.

JURY TRIAL CLAIM

SWAROVSKI OPTIK hereby requests trial by jury on all claims so triable.

Respectfully submitted,

SWAROVSKI OPTIK NORTH AMERICA
LIMITED

by its attorneys,

/s/ Dana B. Parker

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